

ABERDEENSHIRE LICENSING BOARD

Minute of the Meeting of the ABERDEENSHIRE LICENSING BOARD, held by MICROSOFT TEAMS only on 28 FEBRUARY 2024 at 10.15 am

Sederunt:

Board Members:

Mrs M Ewenson(Convenor), Ms Dawn Black (Vice-Convenor), Mr Geoff Crowson, Mr Jeff Goodhall, Mr Trevor Mason, Mr Richard Menard, Mrs Jenny Nicol, Ms Mel Sullivan and Mr Iain Taylor

In Attendance:

Fiona M Stewart, Depute Clerk to the Board; Keith Simpson, Sarah Ward, Lisa Godini and Kevin MacDonald, Licensing Standards Officers; PC Mitch Dickson, Police Scotland; Delysa Borland and Beatrice Hay, Administrators; Jenny Mearns (Livestreaming); Clark Simpson and Harriet Tevendale, Paralegals

Observing: Suzanne Ward, Depute Clerk to the Board; Alasdair Maciver, Trainee Solicitor

Forum Members:None

Apologies:

Mr Stewart Adams had tendered his apologies for the meeting.

Sergeant Neil Grant, Police Scotland, had tendered his apologies for the meeting.

The Convenor welcomed everyone to the meeting.

1 Sederunt and Declaration of Members' Interests

The Convenor asked Members if they had any interests to declare, in terms of the Councillors' Code of Conduct.

Mr Menard made a Transparency Statement in relation to Item 6 on the Agenda by reason of the fact that he had made statements in favour of Aldi three years prior to being elected as a Council but, having applied the objective test he would remain and take part in the deliberation of the item.

2 Public Sector Equality Duty

In taking decisions on the undernoted items of business, the Committee **agreed**, in terms of Section 149 of the Equality Act 2010:-

(1) To have due regard to the need to:-

(a) eliminate discrimination, harassment and victimisation;

- (b) advance equality and opportunity between those who share a protected characteristic and persons who do not share it; and
 - (c) foster good relations between those who share a protected characteristic and persons who do not share it, and
- (2) to consider, where an Integrated Impact Assessment has been provided, its contents and to take those into consideration when reaching a decision.

3 Minutes of the Meeting of 20th December 2023

The minutes of the meeting of 20th December 2023 were agreed as a correct record.

4 LICENSING (SCOTLAND) ACT 2005 - APPLICATIONS FOR GRANT OF PREMISES AND PROVISIONAL PREMISES LICENCES - NON-CONTENTIOUS - FOR APPROVAL

Following consideration of a Report by the Clerk, relating to applications for the grant of premises/provisional premises licences, dated 13th February 2024, copies of which had been circulated in advance, the Board determined the applications as follows:

1. Olive Tree, 10 Dee Street, Banchory, AB31 5ST

GRANTED subject to:

- The recommended local conditions
- NO specific conditions

2. Udny Arms Hotel, 50 Main Street, Newburgh, Ellon, AB4 6BL

GRANTED subject to:

- The recommended local conditions
- The recommended specific conditions

5 LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR GRANT OF PREMISES LICENCE - HEARING - DRUMTOCHTY CASTLE

1. The applicant was represented by Mr Neil Fraser, Solicitor, Aberdeen.
2. The Depute Clerk introduced the report setting out the reasons for the hearing being related to the attachment of some of the local conditions to the licence, if the application was to be granted.
3. The Board heard the submissions of the Applicant's Agent
4. An opportunity was afforded to Board Members to ask questions of the Applicant's Agent.
5. The Applicant's Agent was afforded an opportunity to make concluding remarks,
6. The Board opted not to retire to deliberate the application and debated in public.
7. No legal advice was required from the Depute Clerk.
8. The Board was satisfied that there was sufficient information to allow a determination to be made.
9. Ms Black, seconded by Mr Menard, moved as a motion that the application be granted subject to the agreed local conditions with the removal of conditions relating to outside drinking areas, with the addition of a condition regarding reasonable noise and amendment of condition 7 to remove the words "pool tables" by reason of the

- applicant's Agent having satisfied the Board that a justification for a departure to the attachment of these local conditions was justified in the circumstances of the case.
10. No amendment was proposed.
 11. The Board agreed the motion Unanimously
 12. The Convenor therefore declared the decision carried in terms.

The Board's decision was therefore that the application for the grant of a premises licence be GRANTED subject to:

1. The following local conditions:

- General Management for All Premises – Conditions 1 – 4
- Noise – All Premises – Condition 5
- Lockfast Store – All Premises – Condition 6
- Children and Young Persons – Conditions 7 – 11
 - Condition 7 to be amended to: "Children under the age of twelve years, **shall not** have direct access to darts boards or gaming machines in any part of the premises to which they have access or are allowed entry."
- Vulnerability – Condition 19
- CCTV – All Premises – Conditions 21
- Festive Season – Conditions 38 -42

2. The following specific condition:

- Any music to be played therein not to exceed what would be considered to be a reasonable level.

The applicant having provided sufficient evidence to the Board to justify a departure to the Board's Policy in that conditions relating to the outside drinking area should not be attached and the wording of Condition 7 to be amended to remove the reference to the pool table.

6 LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR GRANT OF PROVISIONAL PREMISES - HEARING - ALDI, MACDUFF

1. The Applicant was represented by Caroline Loudon, Solicitor, Glasgow.
2. Rebecca Broadway, the Area Manager for Aldi, was also present at the Hearing.
3. Sarah Ward, Licensing Standards Officer was present at the hearing.
4. The Depute Clerk introduced the report advising that the reason for the hearing was due to the Board's Overprovision Policy setting out a watching brief for Off Sales with a capacity in excess of the Aberdeenshire average in the Macduff Area.
5. The Board heard the submissions of the Applicant's Agent.
6. The Board heard the submissions of the Licensing Standards Officer.
7. The Board afforded the Applicant's Agent an opportunity to respond to the submissions made.
8. An opportunity was afforded to Board Members to ask questions of all parties present.
9. The Licensing Standards Officer was afforded an opportunity to make concluding remarks
10. The Applicant's Agent was afforded an opportunity to make concluding remarks.
11. The Board opted not to adjourn to debate the application.
12. The Board agreed they had sufficient information upon which to make a determination
13. No legal advice was required from the Depute Clerk who reminded the Board of the terms of the legal test.
14. Mr. Menard, seconded by Mr Crowson, moved as a motion that the application be granted as applied for, subject to the agreed local and specific conditions on the basis that the Applicant's had demonstrated that there was sufficient evidence of benefit across the licensing objectives, particularly that of protecting public health, to outweigh

identified alcohol-related harms in the locality which justified a departure to the Board's overprovision policy.

15. Mr Taylor, seconded by Mr Goodhall, moved as an amendment that the application be granted with an alcohol display area restricted in capacity to the Aberdeenshire average, but with permitted increases in seasonal display areas on the basis that the Applicant's Agent had not provided sufficient evidence of benefit relating to the licensing objectives to outweigh the measures in the Board's overprovision policy related to the identified alcohol-related harms in Macduff.
16. On a division there voted:

For the Motion

Ms Black
Mr Crowson
Mrs Ewenson
Mr Mason
Mr Menard
Mrs Nicol
Ms Sullivan [7 votes]

For the Amendment

Mr Goodhall
Mr Taylor [2 votes]

17. The Convenor accordingly declared the motion carried in terms.

The decision of the Board was therefore to GRANT the application for the provisional premises licence as applied for on the basis that the applicant had demonstrated sufficient evidence of benefit across the licensing objectives, particularly that of protecting public health to outweigh identified alcohol-related harms in the locality. in order to justify a departure to the Board's overprovision policy. The application was granted subject to:

The local conditions recommended in the Board Report and NO specific conditions were identified.

7 LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR REVIEW OF PREMISES LICENCE - HEARING - THE PLOUGH INN, MACDUFF

1. Sarah Ward, the Licensing Standards Officer was present at the hearing.
2. The Licence Holder was neither present nor represented at the hearing.
3. As a preliminary matter, the Board decided to proceed with the hearing in the absence of the Licence Holder.
4. The Board heard the submissions of the Licensing Standards Officer,
5. The Depute Clerk advised the Board of the terms of email correspondence received from the Licence Holder relating to the hearing.
6. An opportunity was afforded to Board Members to ask questions of the Licensing Standards Officer.
7. The Licensing Standards Officer was afforded an opportunity to make closing remarks.
8. The Board opted not to adjourn to deliberate the matter and did not require legal advice from the Depute Clerk.
9. Mrs Ewenson, seconded by Mr Crowson, moved as a motion that the Board DEFER reaching a final decision on the matter until their meeting in April 2024 to provide the Licence Holder with further time to pay the outstanding amount due in relation to the payment of the Annual Fee relating to the premises licence.
10. No amendment was proposed.
11. The motion was agreed unanimously by the Board.

The Board's decision was therefore to DEFER a final decision relating to the review application until the April Board Meeting on 20th April 2024 to allow the Licence Holder more time to pay the annual fee.

The Board further instructed Officers to continue liaising with the Licence Holder to offer assistance where possible.

8 LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR OCCASIONAL LICENCES - REPEATED APPLICATIONS POLICY - MAMMA MIA, BANCHORY

1. Lesia Robertson, the applicant was present at the hearing. Mr Rossetti was also present at the hearing but it was established by the Depute Clerk that he not provided the Board with any evidence that he had been authorised by the applicant to represent her at the hearing but would be entitled to stay and listen to the hearing.
2. Keith Simpson, Licensing Standards Officer was present at the hearing.
3. The Depute Clerk introduced the purpose of the report to the Board and confirmed that a premises licence application had now been lodged with the Board by the applicant.
4. The Board heard the submissions of the applicant.
5. The Board heard the submissions of the Licensing Standards Officer.
6. The applicant was given an opportunity to respond to the submissions made.
7. An opportunity was afforded to Board Members to ask questions of all parties.
8. The Licensing Standards Officer was afforded an opportunity to make concluding remarks.
9. The Applicant was afforded an opportunity to make concluding remarks.
10. The Board opted not to adjourn to deliberate the application.
11. No legal advice was required from the Depute Clerk who read out the terms of the legal test for the Board.
12. The Board agreed that there was sufficient evidence upon which to reach a determination.
13. Ms Black, seconded by Mr Crowson, moved as a motion that the applications be granted on the basis that a premises licence application had been received but that future occasional applications should be determined by the Clerk following consultation with the Convenor.
14. Mr Menard, seconded by Mr Taylor, moved as an amendment that the applications be granted on the basis that a premises licence application had been received but that future applications continue to be determined by the Clerk.
15. On a division there voted:

For the Motion

Ms Black
Mr Crowson
Mrs Nicol
Ms Sullivan [4 votes]

For the Amendment

Mrs Ewenson
Mr Goodhall
Mr Mason
Mr Menard
Mr Taylor [5 votes]

16. The Convenor accordingly declared the amendment carried in terms.

The Board's decision was therefore to GRANT the undernoted applications on the basis that a premises licence application had been lodged with the licensing service subject to the conditions recommended by the Police and the LSO.

1. LAOCC/0299/23 - 21st February – 4th March 2024: 1000 – 2200
2. LAOCC/03001/23 – 19th March – 1st April 2024 1000 – 2200
3. LAOCC/03000/23 – 2nd – 15th April 2024 1000 – 2200

Future applications were to be dealt with by the Clerk under delegated powers but would be brought back before the Board should circumstances merit it during the processing of the premises licence application.

9 **LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR OCCASIONAL LICENCES - REPEATED APPLICATIONS POLICY - THE BOXES, CHAPELTON OF ELSICK, STONEHAVEN**

1. Andy Christie and Brian Gray, the applicants were present at the hearing.
2. Keith Simpson, Licensing Standards Officer was present at the hearing.
3. The Depute Clerk introduced the purpose of the report to the Board.
4. The Board heard the submissions of the applicant.
5. The Board heard the submissions of the Licensing Standards Officer.
6. The applicant was given an opportunity to respond to the submissions made.
7. An opportunity was afforded to Board Members to ask questions of all parties.
8. The Licensing Standards Officer was afforded an opportunity to make concluding remarks.
9. The Applicant was afforded an opportunity to make concluding remarks.
10. The Board opted not to adjourn to deliberate the application.
11. No legal advice was required from the Depute Clerk who read out the terms of the legal test for the Board.
12. The Board agreed that there was sufficient evidence upon which to reach a determination.
13. Mrs Ewenson, seconded by Ms Sullivan, moved as a motion that the applications be granted on the basis that the applicants had demonstrated that there was sufficient reason to justify a departure to the late applications policy in the particular circumstances relating to the applicant's business at the current time and that the business should continue to trade on occasional licences until permanent premises could be found in the locality.
14. No amendment was proposed.
15. The motion was passed unanimously by the Board.
16. The Convenor accordingly declared the motion carried in terms.

The Board's decision was therefore to GRANT the undernoted applications on the basis that

The Board GRANTED the following applications subject to the conditions recommended by the Police and LSO –

1. LAOCC/0299/23 – 21st February – 4th March 2024 off sales 1000 – 2200 and onsales – 1100 – 0000
2. LAOCC/03133/23 – 18th - 31st March 2024 off sales 1000 – 2200 and onsales 1100 – 0000

The Board instructed the clerk to continue accepting occasionals for the running of this premises until such time as a permanent unit could be located in the development within the area to be dealt with under delegated powers.

10 **LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR OCCASIONAL LICENCES - REPEATED APPLICATIONS POLICY - THE FISH SHOP, BALLATER**

1. Jasmine Bowles, the applicant was present at the hearing. Caroline Loudon, Solicitor, Glasgow was present observing the proceedings.
2. Keith Simpson, Licensing Standards Officer was present at the hearing.
3. The Depute Clerk introduced the purpose of the report to the Board and confirmed that a premises licence application had now been lodged with the Board by the applicant.
4. The Board heard the submissions of the applicant.
5. The Board heard the submissions of the Licensing Standards Officer.
6. The applicant was given an opportunity to respond to the submissions made.
7. An opportunity was afforded to Board Members to ask questions of all parties.
8. The Licensing Standards Officer was afforded an opportunity to make concluding remarks.

9. The Applicant was afforded an opportunity to make concluding remarks.
10. The Board opted not to adjourn to deliberate the application.
11. No legal advice was required from the Depute Clerk who read out the terms of the legal test for the Board.
12. The Board agreed that there was sufficient evidence upon which to reach a determination.
13. Mrs Nicol, seconded by Mr Menard, moved as a motion that the applications be granted on the basis that a premises licence application had been received and that future applications continue to be determined by the Clerk.
14. No amendment was proposed.
15. The motion was passed unanimously by the Board.
16. The Convenor accordingly declared the amendment carried in terms.

The Board's decision was therefore to GRANT the undernoted applications on the basis that a premises licence application had been lodged with the licensing service subject to the conditions recommended by the Police and the LSO.

1.LAOCC/02913/23 – 4th – 17th March 2024 off sales – 1000 – 2200 and onsales 1100 – 0000

2. LAOCC/02998/23 – 18th -0 31st March 2024 – off sales 1000 – 2200 and on sales 1100-0000

The Board further instructed that further applications for occasional licences be considered by the Clerk under delegated powers while the premises licence application was being processed.

11

LICENSING (SCOTLAND) ACT 2005 - APPLICATION FOR OCCASIONAL LICENCES - REPEATED APPLICATIONS POLICY - THE STEADING, MARYCULTER

1. Mr Stolte, the applicant was present at the hearing.
2. Lisa Godini, Licensing Standards Officer was present at the hearing.
3. The Depute Clerk introduced the purpose of the report to the Board.
4. The Board heard the submissions of the applicant.
5. The Board heard the submissions of the Licensing Standards Officer.
6. The applicant was given an opportunity to respond to the submissions made.
7. An opportunity was afforded to Board Members to ask questions of all parties.
8. The Licensing Standards Officer was afforded an opportunity to make concluding remarks.
9. The Applicant was afforded an opportunity to make concluding remarks.
10. The Board opted not to adjourn to deliberate the application.
11. No legal advice was required from the Depute Clerk who read out the terms of the legal test for the Board.
12. The Board agreed that there was sufficient evidence upon which to reach a determination.
13. Ms Black, seconded by , Ms Sullivan, moved as amotion that applications be granted until the date of the April Board but that all future applications be referred back to the Board for determination. Further it be made explicit that tours of the premises were not permitted on any licences granted.
14. Mr. Mason, seconded by Mr Menard, moved as an amendment that the applications be refused on the basis that the applicant had not been able to demonstrate that the premises were safe to be used for the sale of alcohol in relation to the licensing objective of securing public safety under the legal test.
15. On a division there voted:

For the Motion

For the Amendment

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|-------------|-----------|-----------|
| Ms Black | Mr Mason | |
| Mr Crowson | Mr Menard | [2 votes] |
| Mrs Ewenson | | |
| Mr Goodhall | | |
| Mrs Nicol | | |
| Ms Sullivan | | |
| Mr Taylor | | [7 votes] |

16. The Convenor accordingly declared the motion carried in terms.

The Board's decision was therefore to GRANT the undernoted until the date of the April Board subject to the conditions recommended by the Police and the LSO and a specific condition that no tours are permitted in the premises

1. LAOCC/03321/23 – 1st – 14th March 2024 1000 – 2200 off sales only
2. LAOCC/03282/23 – 15th - 28th March 2024 – 1000 – 2200 off sales only

The next 2 occasional licences are to be dealt with by the Clerk under delegated powers but applications for occasional licences after that are to be referred to the Board for consideration on 20th April 2024.

12 Date of Next Board Meeting

The Board noted the date of the next Board Meeting was 20th April 2024